Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Truth-in-Billing and Billing Format	)	CC Docket No. 98-170
	)	
National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Monthly Line Items and Surcharges Imposed by Telecommunications Carriers	)	CG Docket No. 04-208

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA)[1] submits its comments through the undersigned and pursuant to the Federal Communications Commission's (FCC's or Commission's) Public Notice[2] regarding the above-referenced docket.

INTRODUCTION

The National Association of State Utility Consumer Advocates (NASUCA) filed a Petition for Declaratory Ruling (Petition) in which it states that all line item charges included on carriers' bills "are misleading and deceptive in their application, bear no demonstrable relationship to the regulatory costs they purport to recover, and therefore constitute unreasonable and unjust carrier practices and charges."[3] In the Petition, NASUCA asks the "Commission to

[1] USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

[2] Public Notice, "National Association of State Utility Consumer Advocates (NASUCA) Petition for Declaratory Ruling Regarding Truth-in-Billing and Billing Format, Pleading Cycle Established," CG Docket No. 04-208, DA 04-1495 (May 25, 2004).

[3] *Truth-in-Billing and Billing Format; National Association of State Utility Consumer Advocates' Petition for Declaratory Ruling Regarding Monthly Line Items and Surcharges*

declare that carriers are prohibited from imposing line items *unless those charges are expressly mandated by federal, state or local regulatory action*."[4] Similarly, NASUCA asks the "Commission to declare that line items allowed must closely match the regulatory assessment."[5] NASUCA maintains that elimination of line items, surcharges, and separate fees would facilitate consumers "to shop among carriers for the lowest rates, making 'apples-to-apples' comparisons, knowing that the only additional charges that they are going to pay for service are those charges that every other carrier is required to impose."[6]

The essence of NASUCA's Petition is to raise concerns that have already been squarely addressed by the Commission – that consumers do not understand their bills because unscrupulous carriers hide or mislabel unauthorized charges[7] or because such carriers do not describe charges in a manner so that consumers can understand their bills.[8] The Commission took action to address these concerns in 1999, by adopting broad, binding principles,[9] requiring "consumer telephone bills to be clearly organized, clearly identify the service provider, and highlight any new providers; . . . that bills contain full and non-misleading descriptions of charges that appear therein; and . . . that bills contain clear and conspicuous disclosure of any

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Imposed by Telecommunications Carriers, Petition for Declaratory Ruling, CC Docket No. 98-170, CG Docket No. 04-208 at vi. (filed March 30, 2004).

[4] *Id*. at vii (emphasis in original).

[5] *Id*.

[6] *Id*. at 66.

[7] *Truth-in-Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-170, ¶¶3, 4, 24 (rel. May 11, 1999) (1999 Order or Further Notice).

[8] *Id*., ¶¶4, 40.

[9] Notably, the Commission chose to issue broad principles rather than detailed rules because it recognized that "carriers may satisfy these obligations in widely divergent manners that best fit their own specific needs and those of their customers." 1999 Order, ¶15.

information the consumer may need to make inquiries about, or contest charges, on the bill."[10] In addition, the Commission was clear that even though it declined to adopt specific rules, it would "not hesitate to take action on a case-by-case basis under section 201(b) of the [Communications Act of 1934, as amended (Act)] Act against carriers who impose unjust or unreasonable line-item charges."[11]

USTA counters NASUCA's complaints about carriers' inclusion of surcharges and fees that are not expressly mandated on their bills, emphasizing that the inclusion of such charges and fees is not inherently problematic. In fact, NASUCA has not demonstrated that there is anything inherently problematic with carriers' use of line item charges for surcharges and fees that are not expressly mandated. Rather, the problem prompting NASUCA's Petition is that certain carriers are not complying with the Commission's binding principles. However, the solution is not to impose the new rules that NASUCA requests, but to address carrier non-compliance on a carrier-specific basis for violation of section 201(b) of the Act.[12] Importantly, the Commission has already provided clear guidance on what constitutes a full and non-misleading description: "sufficient descriptions will convey enough information to enable a customer reasonably to identify and to understand the service for which the customer is being charged."[13] The Commission need only enforce its rules to address NASUCA's complaints that carriers are not complying with the full and non-misleading disclosure requirement.

For the reasons stated below, the Commission should dismiss, or alternatively take no further action on, NASUCA's Petition.

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[10] *Id*., ¶5.

[11] *Id*., ¶58.

[12] *See* 47 U.S.C. §201(b).

[13] 1999 Order, ¶40.

DISCUSSION

I. A PETITION FOR DECLARATORY RULING MAY NOT BE USED TO ISSUE THE NEW RULES REQUESTED BY NASUCA.

The purpose of a declaratory ruling is to terminate a controversy or remove uncertainty,[14] which may include interpretation of a rule. Certainly a declaratory ruling is an appropriate method for the Commission to clarify an existing rule. However, NASUCA seeks more than a clarification in its Petition.

In 1999, the Commission issued a First Report and Order and Further Notice of Proposed Rulemaking in this docket,[15] in which it declined to prohibit line item charges,[16] but sought comment on what standardized labels should be applied to line item charges that carriers were permitted to recover.[17] Thus, the Commission has already approved carriers' use of line item charges to recover permissible taxes, surcharges, and fees. The only unresolved matter with regard to line item charges is how to standardize labels for such charges.[18] NASUCA, however, asks the Commission to prohibit now what it expressly declined to prohibit in the 1999 Order. This request is more than a clarification or interpretation of the Commission's rules issued in

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[14] *See* 47 C.F.R. §1.2.

[15] *See* 1999 Order.

[16] 1999 Order, ¶56 ("We decline to take a more prescriptive approach as to how carriers may recover these costs. We recognize that several commenters assert that service providers should be required to combine all regulatory fees into one charge, (citation omitted) or should be prohibited from separating out any fees resulting from regulatory action. (citation omitted) Other commenters urge us to go even farther and require carriers to include on bills per-minute rates that include all fees associated with the service. (citation omitted) *We decline at this time to mandate such requirements, but rather prefer to afford carriers the freedom to respond to consumer and market forces individually, and consider whether to include these charges as part of their rates, or to list the charges in separate line items.* (citation omitted)" (emphasis added))

[17] *See generally* 1999 Order, ¶72.

[18] The Commission stated that it would choose standard labels based on suggestions received in its Further Notice. *See* 1999 Order, ¶54. To date, no such standards have been developed.

1999 because there is no existing rule that could be interpreted to prohibit carriers from itemizing certain charges. Rather, NASUCA requests that the Commission change its existing rules that permit line items charges, or really, that the Commission issue new rules to prohibit line item charges that are not expressly mandated. "Whereas a clarification may be embodied in an interpretive rule that is exempt from notice and comment requirements, (citations omitted), new rules that work substantive changes in prior regulations are subject to the APA's procedures."[19] Accordingly, the Commission may not issue the new rules that NASUCA requests via a declaratory ruling. Rules can only be made or amended through the process set forth in section 553 of the Administrative Procedure Act (APA).[20]

II. LINE ITEM CHARGES ARE NOT INHERENTLY MISLEADING, DECEPTIVE, OR CONFUSING TO CONSUMERS.

Line items are not inherently misleading, deceptive, or confusing to customers. In fact, line items are one way of providing useful detail to consumers on the surcharges and fees that are being collected beyond the basic rates for service, including the purpose of such charges. The Commission correctly recognized in the 1999 Order that precluding the use of line item charges could actually *facilitate* customer confusion, as carriers could use lump-sum figures to bury costs. As the Commission noted, regulatory–related charges "have different origins and are applied to different service and product offerings."[21] Thus, it is questionable whether all such charges could be included in one lump-sum figure "and presented in a manner in which consumers could clearly understand the origin of such a charge."[22]

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[19] Sprint v. FCC, 315 F.3d 369, 374 (D.C. Cir. 2003).

[20] *See* 5 U.S.C. §553.

[21] 1999 Order, ¶55.

[22] *Id.*

To be sure, the Commission recognized that consumers may benefit from a simplified, total charge approach, and thus encouraged the industry and consumer groups to consider whether some degree of categorization and aggregation of charges would be helpful.[23] But elimination of all line-item charges, unless they are mandated, as NASUCA proposes, was not contemplated. Rather, the principles adopted in the 1999 Order and proposals set forth in the Further Notice were fashioned in a way to balance the need for consumers to understand their bills with the need for carriers to have flexibility to recover their costs in any lawful manner.

Not surprisingly, NASUCA completely ignores the fact that many of the line item charges included on bills, even if not expressly mandated, have been authorized or approved by federal or state agencies (e.g., universal service contributions, number portability, and subscriber line charges).[24] In fact, many of these authorized or approved surcharges and fees are subject to caps (e.g., number portability and subscriber line charges). Moreover, as the Commission clearly stated in the 1999 Order, allegedly unjust or unreasonable line-item charges associated with federal regulatory action, which would include most of the line-item charges specifically referenced by NASUCA, are subject to challenge under section 201(b).[25] If there are carriers that use line items to deceive consumers or that do not sufficiently describe the charges recovered through the line item, the wholesale banning of line items is not the solution. The Commission's existing truth-in-billing rules already address this problem by requiring carriers to

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[23] *Id.*

[24] Notably, Chairman Michael Powell recently spoke out on this matter, stating that "it's a mistake to blame carriers for many of the surcharges they tack onto phone bills even when they are not required by the FCC or any other government agency. In most cases, . . . companies are simply trying to recover money they must pay to the federal or state government, and they shouldn't have to include it in their rates." Todd Wallack, "FCC Chief worries about fees/Phone competition may be hindered, Powell says," San Francisco Chronicle, http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2004/07/13/BUGT17KFC41.DTL (July 13, 2004).

[25] 1999 Order, ¶58.

include a "brief, clear, non-misleading, plain language description"[26] of charges. As stated previously, to satisfy this requirement, the description must "convey enough information to enable a customer reasonably to identify and to understand the service for which the customer is being charged."[27] When carriers fail to comply with this requirement, consumers can avail themselves of the Commission's complaint process and the Commission can take action to enforce its rules.[28] To the extent the Commission finds it necessary, it can further clarify what constitutes a full description of billed charges. However, USTA believes that no additional and no more restrictive truth-in-billing rules are necessary.

III. LINE ITEM CHARGES DO NOT INHIBIT CUSTOMERS' ABILITY TO MAKE PRICE COMPARISONS.

Although NASUCA states it "is *not* opposed to carriers recovering their costs of doing business" or "to carriers making a profit,"[29] NASUCA claims that line item surcharges and fees that are not expressly mandated "mask the true cost of a carrier's service and make it difficult for consumers to make an 'apples-to-apples' comparison of the cost of carrier service."[30] This ignores, however, the competitive nature of today's telecommunications marketplace, in which a one-size-fits-all billing approach is unreasonable and unnecessary. If carriers comply with the Commission's rules and use "brief, clear non-misleading, plain language" descriptions of

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[26] *See also* 47 C.F.R. §64.2401(b).

[27] 1999 Order, ¶40.

[28] As noted previously, the Commission made clear in the 1999 Order that it will not hesitate to take action on a case-by-case basis under section 201(b) of the Act against carriers that impose unjust or unreasonable rates by violating the truth-in-billing principles adopted. *See infra.* p.3.

[29] Petition at 38.

[30] *Id*. at 37. Interestingly, the Commission expressed the opposite concern in its 1999 Order when it stated "we are concerned that precluding a breakdown of line item charges would facilitate carriers' ability to bury costs in lump figures." 1999 Order, ¶56.

charges, as well as provide adequate additional information about any surcharges and fees,[31] whether they roll such charges and fees into their total package prices for services or itemize them, consumers should have the tools they need to make appropriate comparisons about the costs of different carriers' services. Accordingly, either billing approach is just and reasonable under Section 201(b). Moreover, the Commission specifically declined to mandate how carriers recover their costs, but preferred to let the market determine whether carriers should include surcharges and fees in their rates or as separate line items.[32] Consumers are generally aware that additional charges apply for telecommunications services and often inquire as to what their total monthly charge will be. Given the competitive nature of telecommunications, many consumers do their research before selecting any provider, and particularly so when they enter into long-term arrangements with carriers.

IV. PROHIBITING CARRIERS FROM ASSESSING LINE ITEM CHARGES FOR TAXES, REGULATORY CONTRIBUTIONS AND PAYMENTS, AND ADMINISTRATIVE EXPENSES THAT ARE MANDATED, AUTHORIZED, OR APPROVED WOULD CAUSE ADMINISTRATIVE BURDENS AND WOULD HINDER COMPETITION.

If the Commission grants NASUCA's Petition and prohibits carriers from including line-item charges that are not expressly mandated, carriers will be forced to roll such surcharges and fees into a total package price, which could result in administrative and financial repercussions for those carriers, as well as price instability repercussions for consumers.

Although NASUCA requests that the Commission prohibit carriers from assessing line item charges unless such charges are expressly mandated by federal, state, or local government action, NASUCA does not address the fact that there are often conflicting interpretations as to

[31] When subscribers contact carriers to inquire about services and prices, information about taxes, surcharges, and other fees is often voluntarily provided and it is certainly provided upon request.

[32] *See* 1999 Order, ¶56.

what constitutes a "mandated" charge. For example, the Commission permits carriers to recover certain costs from subscribers (e.g., universal service contributions), which costs may be recovered through line item surcharges, but does not mandate that carriers recover those costs either through their rates or through line item surcharges. Yet, some states (e.g., California)[33] do not permit such authorized federal surcharges and fees to be rolled into a carrier's total package price, but rather require them to be included on customer bills as line item charges, essentially converting a non-mandated federal line-item surcharge into a mandated state line-item surcharge. Even if a state did not require a federal surcharge or fee – whether mandated or not – to be itemized on a carrier's bill, a carrier may still not be able to roll such surcharges or fees into their total package price (or rather, their local rates) because the charges are federal charges, not state charges. More specifically, it is questionable whether a carrier could legally recover a federal surcharge or fee in a local rate. Given such conflicting interpretations and other potential problems, implementation of NASUCA's proposal would only inject additional confusion into the carrier billing process.

Even if carriers were permitted to roll non-mandated surcharges and fees into their total package prices, ILECS would still be subject to the administrative burden of filing revised tariffs on a regular basis, perhaps even monthly or quarterly, in order to change prices according to fluctuations in certain surcharges and fees (e.g., universal service contributions that change quarterly). In addition to the fluctuation in such charges and fees, some charges and fees may vary within a region or even a state (e.g., 911 fees can vary from county to county), which would cause carriers to file multiple tariffs for the same services in one state. The frequent filing of

[33] California's Public Utilities Code section 786 requires all federally tariffed charges, such as the federal universal service contribution charge, to be separately itemized and identified as federally tariffed charges.

revised tariffs and the inconsistent filing of tariffs across a region would be time-consuming, administratively burdensome, and confusing to consumers. Equally problematic, some variances in fees, such as 911 fees, would prohibit carriers from offering uniform package prices across a state or region, which impacts their ability to compete by preventing them from being able to effectively market their services at a uniform price.

Perhaps the most significant impact of NASUCA's proposed rules is that ILECs, but not any of their unregulated competitors, would be subject to rate cases, if they are rate-of-return carriers, or various state proceedings to adjust their costs, if they are price cap or alternative regulation carriers, in order to make any changes to their rates to recover costs currently recovered for allowed surcharges and fees. Unlike their competitors – interexchange carriers, competitive local exchange carriers, and wireless carriers – ILECs do not have retail pricing freedom on many products and must pursue rate changes through state proceedings that can be lengthy. It would be unreasonably burdensome to subject ILECs to such costly and time-consuming measures every time a surcharge or fee changed and required a change in rates to recover such change. Unfortunately, ILECs may have to absorb some of the costs that result from changes in surcharges and fees because of the lengthy nature and unpredictable outcome of the state proceedings.

Finally, and perhaps most importantly, rolling surcharges and fees into total package prices would mean that consumers' bills could vary as often as the surcharges and fees vary, which could lead consumers who are accustomed to seeing a consistent base price for services to be confused by the constant change in the amount of their bills.

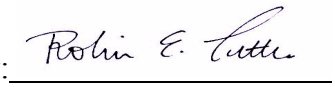
So long as line-item charges are lawful and clearly and accurately described, their use is just and reasonable.

CONCLUSION

Line item charges serve a valuable function and are subject to the Commission's truth-in-billing rules and regulations. If there are individual carriers with individual line items that are problematic, the Commission's existing rules provide a means for addressing and remedying them. However, the wholesale abolition of line item charges advocated by NASUCA is neither reasonable nor necessary. For these reasons, the Commission should deny NASUCA's Petition, or alternatively, take no further action on it.

Respectfully submitted,

UNITED STATES TELECOM ASSOCIATION

By: 

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July 14, 2004

CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on July 14, 2004, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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